

1 has had some problems in the courts in  
2 Florida. And as Chair of the Membership  
3 Committee for the Association for the  
4 Treatment of Sexual Abusers, she ended up  
5 putting in a membership application to join  
6 the association. And that's how I became  
7 aware of this information.

8 JUDGE SIPPEL: Are you a member of  
9 that association?

10 THE WITNESS: I'm on the board of  
11 directors of that association, and I'm the  
12 Chair of the Membership Committee. She  
13 submitted an application for membership. The  
14 committee reviewed her application. She had  
15 put on her application that she had no ethical  
16 violations. The Membership Committee was, at  
17 that point, ready to approve her membership  
18 based on her application when members of the  
19 State of Florida and the State of Washington  
20 submitted information to us from a court in  
21 Florida where she got chewed out by the court  
22 for some ethical violations. And at that

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1 point, the committee decided that we needed to  
2 check with our legal counsel, which we did.  
3 The legal counsel said unless there was some  
4 sort of action taken on her license that we  
5 were required to accept her membership. The  
6 Membership Committee then decided, based on  
7 counsel's advice, that we would accept her  
8 membership.

9 JUDGE SIPPEL: What is this  
10 organization again?

11 THE WITNESS: It's the Association  
12 for the Treatment of Sexual Abusers.

13 JUDGE SIPPEL: Association for  
14 Treatment of Sexual Abusers.

15 THE WITNESS: Yes.

16 JUDGE SIPPEL: Okay. And is that  
17 a nationwide --

18 THE WITNESS: It's an  
19 international organization.

20 JUDGE SIPPEL: International. How  
21 many members does it have, roughly?

22 THE WITNESS: Twenty-eight

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1 hundred.

2 JUDGE SIPPEL: Twenty-eight  
3 hundred. Thank you.

4 BY MR. LYON:

5 Q And the fact that she got chewed  
6 out by a judge, what makes you conclude that  
7 she's not a respected sex offense researcher?

8 A Well, I'll tell you, since we  
9 accepted her membership, I have had nothing  
10 but grief from members of the Washington  
11 Association for the Treatment of Sexual  
12 Abusers, which I'm also a member, as well as  
13 members of the Florida Association for the  
14 Treatment of Sexual Abusers. They were  
15 furious with us over accepting her into the  
16 organization. No matter how much we tried to  
17 explain that, look, there was no action taken  
18 against her license and we had to do this on  
19 the attorney's advice, to this day we still  
20 get grief, I still get grief over the fact  
21 that we accepted her into the organization.

22 Q Okay. Do you believe that the

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1 MSOST is an obsolete measure of the potential  
2 for sexual recidivism?

3 A I believe that it is not the best  
4 tool that could be used.

5 Q It is true, is it not, that Dr.  
6 Epperson never held it out as a finished  
7 actuarial product but only as a research tool?

8 A Yes, that's true.

9 Q Are you aware that Hansen and  
10 Bussiere --

11 A Bussiere.

12 Q -- Bussiere 1996 and 1998 meta  
13 assessment study of various actuarial tools?

14 A I am.

15 Q And didn't Hansen and Bussiere in  
16 that study find that many MSOST items did not  
17 hold up on cross validation?

18 A That's true.

19 Q And are you aware that Epperson  
20 has conceded that the MSOST has only modest  
21 predictive ability?

22 A What is the source of that

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1 information?

2 Q Hold on a second. I will actually  
3 get it for you.

4 JUDGE SIPPEL: We're off the  
5 record while counsel finds it.

6 (Whereupon, the foregoing matter  
7 went off the record at 11:21 a.m. and went  
8 back on the record at 11:23 a.m.)

9 JUDGE SIPPEL: Back on the record.

10 BY MR. LYON:

11 Q We are going to have to come back  
12 to that because we're having difficulty  
13 finding that. So I take it from your question  
14 that you are not aware of whether Epperson has  
15 conceded that the MSOST has only modest  
16 predictive ability?

17 A I'm not aware of that.

18 Q Okay. Are you aware that the  
19 MSOST sample was only of 256 Minnesota sex  
20 offenders released between 1988 and 1993?

21 A I'm not aware of that.

22 Q In your testimony, you list

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1 certain dynamic factors that you think may  
2 have an effect on sexual recidivism.

3 A Yes.

4 Q They are sexual preoccupation?

5 A Yes.

6 Q Victim access?

7 A Yes.

8 Q Hostility?

9 A Yes.

10 Q Employment and residence  
11 instability?

12 A Yes.

13 Q Substance abuse?

14 A Yes.

15 Q Collapse of social support?

16 A Yes.

17 Q Rejection of supervision?

18 A Yes.

19 Q Nonconformity?

20 A Yes.

21 Q Can you point me to any peer  
22 review literature which validates these as

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1 risk factors for sexual re-offense?

2 A Well, actually, Dr. Andrew Harris  
3 did a, he's done the Stable 2000 and the Acute  
4 2000, and now he's doing the Stable and Acute  
5 2007. And Dr. Harris and I both presented it  
6 jointly regarding the acute risk factors for  
7 re-offense, and those are in the Acute. So  
8 that's been presented before ATSA.

9 Q And ATSA is?

10 A The Association for the Treatment  
11 of Sexual Abusers. It's a --

12 Q And what -- I'm sorry, go ahead.

13 A ATSA holds a conference every year  
14 in which all of the researchers, clinicians in  
15 the field attend, and a lot of these topics  
16 are discussed and reviewed, and there's all  
17 kinds of poster sessions. There's plenary  
18 sessions. There's all kinds of the latest and  
19 greatest information, and sex offender  
20 research is discussed at these conferences.

21 Q Okay. And the conference where  
22 Dr. Harris presented this study is when?

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1           A     2006 I believe it was. He's  
2     presenting again this year at the conference,  
3     as well.

4           Q     Do you have any evidence that Mr.  
5     Titus directs his sexual interest any longer  
6     toward minors?

7           A     I do not.

8           Q     In terms of antisocial  
9     orientation, have you been made aware of a  
10    number of character witness statements made on  
11    behalf of Mr. Titus?

12          A     I have.

13          Q     Have you reviewed them?

14          A     I have.

15          Q     Do you believe that, based upon  
16    your understanding of Mr. Titus' record and  
17    the character witness statements that you've  
18    reviewed, do you believe that Mr. Titus has an  
19    antisocial orientation?

20          A     Well, I believe that, based on his  
21    convictions, based on the charges that were  
22    eventually dismissed, based on his actuarial

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1 risk assessment that we did, based on his  
2 motor vehicle accident that he had, the  
3 incident at Mercer Island, I do believe that  
4 Mr. Titus is a high risk to re-offend.

5 Q My question was do you believe  
6 that he is antisocial?

7 A I'm not a psychologist. I'm not  
8 qualified to diagnose antisocial personality  
9 disorder.

10 JUDGE SIPPEL: Can I ask a  
11 question to you? I don't want to have to come  
12 back to it because it's clear in my mind. You  
13 said that because of the automobile situation,  
14 automobile accident, and the Mercer Island  
15 incident, among other things of course, but  
16 you included those two items in your list of  
17 categories, list of items, that he would be  
18 likely to, I guess you would say more likely  
19 than not likely to re-offend, yes, to re-  
20 offend? Am I using the word properly?

21 THE WITNESS: Yes, your Honor, you  
22 are.

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1 JUDGE SIPPEL: Re-offend, meaning  
2 that he would be more likely to violate his  
3 obligations with respect to sexual involvement  
4 with young people, is that --

5 THE WITNESS: Or that he would be  
6 more likely to re-offend in a sexual way.

7 JUDGE SIPPEL: We're only  
8 interested here in the sexual offenses against  
9 young people. You say no?

10 THE WITNESS: No, I understand  
11 what you're saying. But what I'm saying is  
12 that because of everything that I have just  
13 said --

14 JUDGE SIPPEL: Yes.

15 THE WITNESS: -- that it is my  
16 opinion, based on all of this information,  
17 plus my many years of experience in this area,  
18 that Mr. Titus is more likely to re-offend in  
19 a sexual way, whether it be children. His  
20 preference at the time was children. He's  
21 still a high risk to re-offend in a sexual  
22 way.

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1 JUDGE SIPPEL: Well, he's never --  
2 I'll leave it there, and, certainly, you know,  
3 I respect all of the things that you said in  
4 terms of why you're coming to that conclusion.  
5 I'm just bothered by the fact that you would  
6 want to include the automobile situation, the  
7 accident situation, and the Mercer Island  
8 situation.

9 THE WITNESS: May I explain, your  
10 Honor?

11 JUDGE SIPPEL: Please. Yes,  
12 please do. That's what I'm asking.

13 THE WITNESS: As we talked about  
14 yesterday, most sex crimes are crimes of power  
15 and control. Not all, but most all are crimes  
16 of power and control. We have a situation  
17 with the automobile accident where the victim  
18 in the automobile accident thought that Mr.  
19 Titus was putting himself out to be a law  
20 enforcement officer.

21 MR. LYON: Objection to the extent  
22 of the witness is purporting to testify as to

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1        what someone else has.

2                JUDGE SIPPEL: Well, I'm not going  
3        to, I'm going to overrule the objection on a  
4        limited basis. I'm concerned, I want to just  
5        hear what the reasoning of the Detective is  
6        with respect to those two incidents.

7                THE WITNESS: And in the accident  
8        report, the victim even states she asked him,  
9        "Are you a law enforcement officer?" and he  
10       refused to answer. Then we get to the Mercer  
11       Island incident where he's got his sheriff's  
12       hat, he's got a small badge from King County  
13       Sheriff's Department, and he's got a  
14       flashlight commonly used by police. Again,  
15       you know, it makes it look like he is trying  
16       to make himself look like a law enforcement  
17       officer. We have him still putting his  
18       sheriff hat in his vehicle where people in the  
19       neighborhood where he lives believe, because  
20       of the antennas on the back of his vehicle,  
21       the fact that he's got the sheriff's hat on  
22       the dashboard, they believe that he is a

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1 police officer. He's all playing to power and  
2 control.

3 JUDGE SIPPEL: All right. Well, I  
4 know, I mean I know just up the block, up  
5 Independence Avenue I can buy myself a CIA  
6 hat, an FBI hat, a protected witness shirt.  
7 This paraphernalia, unless it's -- well,  
8 again, I know. You've answered my question.  
9 You've answered my question. I understand  
10 where you're coming from, and that's all that  
11 I intended to do. You may proceed.

12 MR. LYON: Thank you. But you're  
13 stealing my cross examination.

14 JUDGE SIPPEL: I'm sorry. I get  
15 curious once in a while.

16 MR. LYON: That's all right.

17 BY MR. LYON:

18 Q Detective, in terms of age, isn't  
19 it true that studies show that the highest  
20 incidence of risk for an offender is in the  
21 20s?

22 A That's correct.

1 Q And Mr. Titus is in his mid-30s  
2 now, isn't he?

3 A I believe so.

4 Q And his conviction was when he was  
5 18, correct?

6 A Well, one of his convictions was  
7 when he was 18.

8 Q Well, you might be confusing  
9 convictions in juvenile adjudication.

10 JUDGE SIPPEL: Let's be specific.

11 Ask him --

12 BY MR. LYON:

13 Q His juvenile adjudications were 15  
14 and under, correct?

15 A He had two adjudications when he  
16 was 15 and under, yes.

17 Q Okay. And he had a conviction at  
18 18, correct?

19 A Well, we're doing semantics here.  
20 The adjudication is the same as a conviction.  
21 It's just juvenile court versus adult court.

22 Q It may be in your mind, but the

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1 law does make a distinction. It does call it  
2 an adjudication if you're a juvenile, and a  
3 conviction if you're an adult.

4 A That's true. Remember the federal  
5 Adam Walsh Act, it says that adjudications and  
6 convictions are to be considered convictions.

7 Q I understand that. Nevertheless,  
8 Mr. Titus' adjudications and convictions were  
9 when he was under 20.

10 JUDGE SIPPEL: I'm sorry. Answer  
11 that question, and then I'll butt in again.  
12 Go ahead. I'm sorry. You want to ask him the  
13 question, you can --

14 THE WITNESS: You're correct, Mr.  
15 Lyon.

16 MR. LYON: Okay. Go ahead, your  
17 Honor.

18 JUDGE SIPPEL: The Adam Walsh, you  
19 kind of brought in that Adam Walsh. This gets  
20 to be a little bit disturbing because, as I  
21 understand it, you basically are rejecting  
22 Adam Walsh as a, I'm not going to say as

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1 inappropriate but that it is not, Adam Walsh  
2 is not the way to go in this program. That's  
3 basically what you have concluded.

4 THE WITNESS: I don't believe that  
5 it is. Unfortunately, the Congress of the  
6 United States and the Attorney General believe  
7 it is.

8 JUDGE SIPPEL: I appreciate that,  
9 and I recognize that. But if Adam Walsh is  
10 not the way to go in your opinion, then  
11 there's no reason to bring Adam Walsh into  
12 your assessment of Mr. Titus, unless I'm being  
13 led to believe something else.

14 THE WITNESS: Well, the State of  
15 Washington has not ratified the Adam Walsh Act  
16 yet. In a political year, like this is, and  
17 the state has to do it this year, this next  
18 legislative session, there's every reason to  
19 believe that it is going to be passed.

20 JUDGE SIPPEL: Whether it is or  
21 not is irrelevant as far as I am concerned.  
22 Mr. Titus is on the books as a level-three

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1 offender, and he's on the books as a level-  
2 three offender because, basically, you put him  
3 there. And you did it on the basis of certain  
4 test standards and all that you're testifying  
5 to today. You didn't put him there because of  
6 Adam Walsh.

7 THE WITNESS: No, that's exactly  
8 right. Yesterday, though, under Adam Walsh,  
9 he would be a tier three.

10 JUDGE SIPPEL: Well, we don't  
11 really care about that. For purposes of your  
12 testimony, for purposes of your participation  
13 in the Titus situation has got nothing to do  
14 at all with Adam Walsh. That's a legislative  
15 matter. As you say, you've given all the good  
16 reasons why it may very well become law, but  
17 we're focusing here today on the standards  
18 that you applied when you assigned him the  
19 level three. And the record is clear, I think  
20 it's getting clearer all the time, but I just  
21 don't want to drag Adam Walsh into it to say,  
22 well, maybe he was really thinking of Adam

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1 Walsh, too. You weren't?

2 THE WITNESS: No, no, not at all.  
3 My only point was is that under Adam Walsh  
4 Act, if the state chooses to pass that, he  
5 will still be a tier three.

6 JUDGE SIPPEL: Okay. All right,  
7 all right, I see. Okay. I understand better  
8 now.

9 MR. KNOWLES-KELLETT: You got off  
10 the point, though. I think the question was  
11 are adjudications and convictions treated the  
12 same way, and you were saying that Adam Walsh  
13 says that they're to be treated the same way.

14 THE WITNESS: Yes.

15 MR. KNOWLES-KELLETT: And Mr. Lyon  
16 was going forward from there. Did I --

17 MR. LYON: Well, I didn't ask that  
18 question. I had asked the question whether  
19 the law, in terms of Washington State treats  
20 them differently, at least calls them  
21 differently. I mean, I can get into the whole  
22 concept of the justice program, but I don't

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1 think we need to.

2 JUDGE SIPPEL: No. And, in fact,  
3 I'm going to really strike the answer as being  
4 responsive with respect to Adam Walsh.

5 MR. LYON: Okay. That's fine,  
6 your Honor.

7 BY MR. LYON:

8 Q Let me move on. Just to be clear,  
9 Mr. Titus has lived in the community now for  
10 14 years, and it's been 16 years since he was  
11 charged with his offense, right?

12 A Yes.

13 Q Okay. Now, there came a time when  
14 you received a report on Mr. Titus from the  
15 Mercer Island Department of Public Safety?

16 A Yes.

17 Q Okay. That occurs on or about  
18 July 7 of '04?

19 A I would have to look at the  
20 report. If you say that was the date then --

21 Q I'll represent that as the date,  
22 but if you want to refresh your recollection

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1 I would suggest you refer to Exhibit 4, page  
2 38.

3 A Okay.

4 MS. LANCASTER: I believe it's 38  
5 through 40.

6 JUDGE SIPPEL: Well, he's only  
7 asking with respect to 38, though. Is that  
8 right?

9 MR. LYON: Well, 38 or any other  
10 page necessary to refresh the witness'  
11 recollection as to the date. I will represent  
12 that it is in evidence and dated 7/7/04.

13 THE WITNESS: I see it. And it is  
14 dated 7/7/04.

15 BY MR. LYON:

16 Q Okay. Now, in response to  
17 receiving the report from the Mercer Island  
18 Department of Public Safety, you raised Mr.  
19 Titus to a level three?

20 A That, in addition to the motor  
21 vehicle accident, yes.

22 Q Okay. Now, you said that he was

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1 caught with a King County hat, a KEL-Light,  
2 and a King County badge necklace --

3 A Yes.

4 Q -- is that correct? Okay. And  
5 did you --

6 MR. KNOWLES-KELLETT: Objection,  
7 your Honor. I'm not sure he testified that  
8 there was a King County hat.

9 MS. LANCASTER: Sheriff's hat.

10 JUDGE SIPPEL: It was a sheriff's  
11 hat.

12 MR. KNOWLES-KELLETT: I think that  
13 the clear testimony that it was just a  
14 sheriff's hat, and I don't think you asked him  
15 --

16 JUDGE SIPPEL: His objection is is  
17 that he didn't testify to a King's County hat,  
18 he testified to a sheriff's hat.

19 MR. LYON: Actually, your Honor, I  
20 wasn't asking about testimony. I was asking  
21 about a prior statement.

22 JUDGE SIPPEL: Some other --

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1 MR. LYON: By the witness.

2 JUDGE SIPPEL: By the witness?

3 MR. LYON: Right.

4 JUDGE SIPPEL: All right. Do you  
5 have the source of the prior statement?

6 MR. LYON: Absolutely.

7 JUDGE SIPPEL: All right. Well,  
8 why don't you ask the witness just straight up  
9 then? Maybe he recollects it. Maybe he  
10 recollects what you're asking.

11 BY MR. LYON:

12 Q Do you recollect saying that Mr.  
13 Titus was caught with a King county hat, a  
14 KEL-Light, and a King County badge necklace?

15 A I believe I did say that.

16 Q I'm sorry. Your voice is so soft  
17 sometimes, I can't hear you.

18 A I said I believe I did say that.

19 Q All right. And, in fact, you e-  
20 mailed Tina Keller to indicate that you were  
21 raising his level to a level three?

22 A Yes.

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1 Q And, in fact, you said, you told  
2 her, quote, "Show this clown as a level three  
3 on your web site?"

4 A I did.

5 Q I'm not familiar with that term.  
6 Is clown an official police term?

7 A No, that was an indiscretion on my  
8 part.

9 Q In other words, you were treating  
10 Mr. Titus with some degree of derision?

11 A Some degree of what?

12 Q Derision.

13 A I'm not sure what that means.

14 Q Contempt.

15 A I was irritated at the time, yes.

16 Q And was this before or after you  
17 made the evaluation to move him up to a level  
18 three?

19 A Was what before or after?

20 Q When you sent the e-mail to --

21 A Tina Keller?

22 Q -- Tina Keller and said we're

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1 showing this clown as a level three.

2 A We had already raised him to a  
3 level three, and then she was notified to show  
4 him as a level three on their web site.

5 Q Okay. Now, in fact, he was caught  
6 washing his hands after using the bathroom,  
7 isn't that right?

8 A I recall he was caught in the  
9 bathroom. I don't know what he was doing in  
10 the bathroom.

11 Q The investigating officer accused  
12 him of shooting paint balls against the wall.

13 A Well, I know that's allegedly why  
14 the officer stopped to begin with because he  
15 saw paint ball splatters on the wall of the  
16 bathroom, so he stopped investigating.

17 Q Okay. I think it might have been  
18 a she, but there's nothing that indicates that  
19 Mr. Titus had a paint ball gun, is there?

20 A No.

21 Q And there's nothing to indicate  
22 that he had paint balls?

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1 A No.

2 Q Now, in the connection with this,  
3 we'll call it a stop by the officer; is that  
4 the correct term?

5 A Yes, sir.

6 Q Okay. In connection with this  
7 stop, Mr. Titus voluntarily allowed the  
8 officer to search his vehicle or allowed an  
9 officer to search his vehicle?

10 A Yes.

11 Q Okay. And as a result of that  
12 voluntary search, the officer found a hat that  
13 said "sheriff," right?

14 A Yes.

15 Q It didn't say "King County  
16 Sheriff," right?

17 A I'm not sure if it said King  
18 County Sheriff or what it said.

19 Q Okay. Nevertheless, you told Tina  
20 Keller that it said King County Sheriff,  
21 right?

22 A I believe I did.

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1 Q Okay. So is it fair to say that  
2 you made the assumption that it said King  
3 County Sheriff?

4 A That would be fair.

5 Q And I take it that you speculate  
6 that Mr. Titus was trying to impersonate a  
7 police officer?

8 A Not at that time.

9 Q Did you ever come to that  
10 conclusion?

11 A No, but I find it unusual that  
12 somebody whose crimes are of power and control  
13 would have a symbol of power and control in  
14 their vehicle.

15 Q Do you understand that Mr. Titus  
16 has stated that he had a friend who was a King  
17 County sheriff who gave him that hat?

18 A I understand that he said that,  
19 but he would never identify who that was so we  
20 could check it out.

21 Q It's not illegal to have such a  
22 hat?

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